

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STEVEN RAY SCHILLEREFF,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

Case No. C06-5509FDB

ORDER TO SHOW CAUSE

This 28 U.S.C. § 2254 petition for habeas corpus relief has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636 (b) and local Rules MJR 3 and 4. Petitioner has been granted *in forma pauperis* status. Review of the petition shows petitioner currently has a motion for discretionary review before the Washington State Supreme Court (Dkt. # (proposed petition, page 4)).

Thus, no issues have been exhausted and this petition was filed out of fear the statute of limitations may run. Petitioner is informed that the time frame for the one year statute of limitation is tolled while a state court petition is pending. 28 U.S.C. § 2244(d) provides as follows:

(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of-

1 (A) the date on which the judgment became final by conclusion of direct review or the
2 expiration of the time for seeking such review;

3 (B) the date on which the impediment to filing an application created by State action in
4 violation of the constitution or laws of the United States is removed, if the applicant was prevented
5 from filing by such State action;

6 (C) the date on which the factual predicate of the claim or claims presented could have
7 been discovered through the exercise of due diligence.

8 (2) The time during which a properly filed application for State post-conviction or other collateral
9 review with respect to the pertinent judgment or claim is pending shall not be counted toward any
10 period of limitation under this subsection.

11 Petitioner states the document he has filed is a “skeleton” petition and he does not know what
12 issues he will raise in the actual petition when he files it. Petitioner also states he will be filing a motion to
13 stay this petition until state court proceedings are completed (Dkt # 1, (proposed petition, page 2)).

14 Petitioner is ORDERED to show cause why this petition should not be **DISMISSED WITHOUT**
15 **PREJUDICE**. The court only stays petitions in exceptional circumstances and for good cause. Here, the
16 federal one year statute of limitations is not running and will not run until petitioners’ state proceedings are
17 concluded. There is no reason for the court to entertain and then stay a “skeleton” petition. A response to
18 this order is due on or before **November 24th, 2006**.

19 The Clerk is directed to mail a copy of this Order to petitioner and note the November 24th, 2006 date
20 on the court’s calendar.

21 DATED this 17th, day of October, 2006.

22 /s/ J. Kelley Arnold
23 J. Kelley Arnold
24 United States Magistrate Judge
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